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No. 647

IN THE

Supreme Court of the United States

JACK ANTHONY GULLO,
Petitioner

v.

MIRIAM ANNE GULLO,
Respondent

Petition for Writ of Certiorari to the Circuit Court of Fairfax County of the Sixteenth Judicial Circuit of the State of Virginia

JOSEPH SAMUEL GULLO
602 Arlington Trust Building
Arlington, Virginia

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In The

Supreme Court of the United States

Jack Anthony Guillo,
Petitioner

v.

Miriam Anne Guillo,
Respondent

Petition for Writ of Certiorari to the Circuit Court of Fairfax County of the Sixteenth Judicial Circuit of the State of Virginia

---

Petitioner prays that a writ of certiorari issue to review the final decree of the circuit court of Fairfax County of the Sixteenth Judicial Circuit of the State of Virginia entered in the above entitled cause on April 28, 1961.

OPINIONS BELOW

No opinions were given, delivered, or reported in the courts below; other than the final decree entered on April 28, 1961.

JURISDICTION

The final decree of the circuit court of Fairfax County of the sixteenth judicial circuit of the State of Virginia

was entered on April 28, 1961. (Appendix B, infra, p. 17). A timely petition for appeal to the Supreme Court of Appeals of Virginia at Richmond for a review of the final decree was refused on October 16, 1961. (Appendix B, infra, p. 22).

The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257(3).

HOW FEDERAL QUESTION IS PRESENTED

Petitioner filed a timely plea to annul his marriage to respondent's suit for divorce filed in the circuit court of Fairfax County, State of Virginia. Its final decree entered on April 28, 1961, cannot be supported if the plea had been affirmed. A federal question was raised and presented to the court below; the Full Faith and Credit Clause of the United States Constitution. In his plea, petitioner asserts his marriage to respondent is null and void since her marriage to her former husband has never been lawfully dissolved nor annulled; and in part provides:

> "The plaintiff . . . caused a bill of complaint for divorce from her said husband, John J. Brown, to be filed in the District Court of New Mexico by representing; deliberately, falsely, and under oath to the said court that she was a resident of Albuquerque, New Mexico."

Upon the taking of all the testimony and receiving in evidence all the exhibits, depositions, and stipulations on petitioner's plea; and upon respondent admitting that neither she nor her former husband was domiciled, or had a residence, in the State of New Mexico at the time she obtained a divorce from her first husband, John J. Brown, she filed a memorandum of authorities solely on the question of law, contending that:

> "The Full Faith And Credit Clause of the United States Constitution prohibits the defendant from at-

> tacking the complainant's prior New Mexico divorce decree from her former husband in this State if he cannot attack the same in New Mexico."

Petitioner agreed by stipulations (Appendix C, infra, p. 23) to file a reply memorandum of points and authorities contending that:

> "Clear, admitted, and undisputed evidence shows that neither the complainant wife nor her former husband was domiciled in the State of New Mexico where the divorce was granted; the court of New Mexico was without jurisdiction and its decree is not entitled to Full Faith And Credit in the State of Virginia . . ."

Thereupon, the Judge Pro Tem continued the hearing on respondent's bill of complaint, upon petitioner's answer, defenses and cross-bill, and on April 28, 1961, entered his final decree denying petitioner's plea and granting a divorce to respondent and other relief, to which petitioner noted his exceptions.

Petitioner duly filed a Notice of Appeal and Assignment of Errors, and his Petition for Appeal to the Supreme Court of Appeals of Virginia, which has jurisdiction to review the final decree entered on April 28, 1961 of the circuit court of Fairfax County; and is the highest court of the State in which a decision could be had. Code of Virginia 1950, Title 8 Sections 462 and 463, Title 17 Section 94; Rules of Supreme Court of Appeals of Virginia, Rule 5:1 Section 4 (Appendix A, infra, pp. 15, 16). Naim v. Naim, 197 Va. 734, 735, 90 S.E. 2d 849.

Among others, the following errors were assigned:

3. The court erred in denying the plea to annul the marriage upon complainant's memorandum which provides:

> "The Full Faith and Credit Clause of the United States Constitution prohibits the defendant from attacking the complainant's prior New Mexico divorce

from her former husband in this State if he cannot attack the same in New Mexico."

4. The court erred in failing to grant the plea to annul the marriage to defendant upon his reply memorandum identified as points and authorities in support of annulment which provides:

> "Clear, admitted, and undisputed evidence shows that neither the complaint wife nor her former husband was domiciled in the State of New Mexico where the divorce was granted; the court of New Mexico was without jurisdiction and its decree is not entitled to Full Faith and Credit in the State of Virginia . . ."

Included in the record of appeal are complete, true, and correct transcripts of the testimony and proceedings taken ore tenus concerning petitioner's plea to annul the marriage, which were acknowledged as such by affidavit of counsel for respondent. In addition, all exhibits, depositions, and stipulations relating thereto were received into evidence.

Respondent's brief in opposition to petitioner's petition for appeal asserts: (Appendix D, infra, p. 24)

> "The appellee concedes that she was not domiciled in the State of New Mexico at the time she obtained a divorce from her first husband, John J. Brown."

Petitioner made his oral presentation of his petition before a panel of the Supreme Court of Appeals of Virginia. On October 10, 1961, that court refused the petition for appeal from the decree entered by the circuit court of Fairfax County on April 28, 1961.

The decree of the circuit court of Fairfax County and refusal by the Supreme Court of Appeals of Virginia to review makes the decree of the lower court final.

Upon such refusal the clerk of the Supreme Court of Appeals returns the record to the clerk of circuit court of Fairfax County forthwith.

Rules of Supreme Court of Appeals of Virginia, Rules, 2:22, 5:1 Section 12, 5:14 (Appendix A, infra, p. 16). Naim v. Naim, 197 Va. 734, 735, 90 S.E. 2d 849, Norfolk & Suburban Turnpike Co. v. Commonwealth of Virginia, 225 U.S. 264, 269, 32 S.Ct. 828, 830, Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157, 74 S.Ct. 396, 397, 398.

QUESTION PRESENTED

Whether a divorce decree granted to complaint wife by the court of New Mexico is entitled to recognition in the State of Virginia under the Full Faith and Credit Clause of the United States Constitution when clear, admitted and conceded facts show that neither complainant wife nor her former husband was domiciled, or had a place of residence, in the State of New Mexico, and complainant wife obtained her divorce decree by fraud upon the court of New Mexico.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article IV Section 1 of the Constitution of the United States provides:

> "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

An authenticated copy of New Mexico statute, Section 22-7-4 provides:

> 22-7-4 *Residence requirement.*—The plaintiff in action for the dissolution of the bonds of matrimony must have been an actual resident, in good faith, of the state for one (1) year next preceding the filing of his or her complaint; Provided, however, that in

a suit for the dissolution of the bonds of matrimony wherein the wife is plaintiff, the residence of the husband in this state shall inure to her benefit and she may institute such action setting up any of the causes mentioned in section 2773 (25-701) [22-7-1] immediately after the accrual thereof, providing her husband shall have been qualified as to residence to institute a similar action; and Provided further, persons serving in any military branch of the United States government who have been continuously stationed in any military base or installation in the state of New Mexico for such period of one (1) year, shall for the purposes hereof, be deemed residents in good faith of the state and county where such military base or installation is located.

History: Laws 1901, ch. 82, § 25; Code 1915, § 2775; Laws 1921, ch. 196, § 1; C.S. 1929, § 68-504; Laws 1951, ch. 107, § 1; 1941 Comp., § 25-704.

Title of Act.

An act to amend section 25-704 of the New Mexico 1941 Compilation, the same being section 25, chapter 62, of the New Mexico Session Laws of 1901, as amended relating to residence requirements for persons seeking to obtain a divorce, and for other purposes.—Laws 1951, ch. 107.

Amendments.

The 1921 amendment added the first proviso.

The 1951 amendment added the second proviso.

Coram non Judice.

Entry of judgment is coram non judice where the plaintiff is not a bona fide resident of the state since the trial court is without jurisdiction to enter a judgment in such a case. Allen v. Allen, 52 N. M. 174, 194 P. 2d 270.

Definition.

By "actual resident in good faith" this section contemplates a residence of a permanent and fixed character, an actual residence substantially like that attributable to the term "domicil."

STATE OF NEW MEXICO,)
COUNTY OF BERNALILLO,) ss.

I, the undersigned, Clerk of the District Court of the Second Judicial District of the State of New Mexico, within and for the County of Bernalillo, do hereby certify the above and foregoing to be a true, correct and complete copy of SECTION 22-7-4 OF NEW MEXICO STATUTE ANNOTATED, 1953 COMP. as the same remains on file and of record in my office.

WITNESS my hand and the seal of said Court this 7th day of September, 1961.

/s/ Salomon Vallejos
Clerk

By

STATEMENT

Respondent admits and concedes she was not domiciled, or had a residence, in the State of New Mexico at the time she obtained a divorce from her first husband, John J. Brown, who at the time of the divorce was a resident of the State of Pennsylvania.

Petitioner knows of no case reported by this Court, where it has held a decree to be valid and entitled to recognition, when the domicile of neither has been admitted and conceded, and the court rendering the decree holds such a decree to be void. In Bell v. Bell, 181 U.S. 175, 21 S. Ct. 551 and Streitwolf v. Streitwolf, 181 U.S. 179, 21 S. Ct. 553, this court held that a decree by the court of a state in which neither party is domiciled is invalid and entitled to no recognition in another state. New Mexico holds such a decree to be void. The authenticated copy of the New Mexico statute shows an actual residence requirement of the plaintiff in good faith for one year

next preceding the filing of her complaint. Allen v. Allen, 52 N. M. 174, 194 P. 2d 270, 274 annotated to such statute states that entry of judgment is coram non judice where plaintiff is not a bona fide resident of the state since the trial court is without jurisdiction to enter a judgment in such a case. Clearly, the decree of the court below is erroneous. To hold otherwise, would render meaningless the assertion of a right entitled to Full Faith and Credit and in effect abrogate Article IV Section 1 of the Constitution of the United States.

A summary of the facts contained in the record follows:

Respondent left petitioner at their home, Fairfax County, Virginia, on September 16, 1960, and on November 16, 1960, filed her bill of complaint for divorce against petitioner on grounds of adultery, alleging she first learned of such adultery on October 5, 1960, or upon constructive desertion.

On December 1, 1960, petitioner filed his plea to annul his marriage since respondent's marriage to her former husband then living has never been lawfully dissolved nor annulled, which petitioner learned after she left him.

Respondent filed a general replication to his plea. No defenses were filed thereto.

The court granted respondent an order to have petitioner file his answer, and defenses to her bill and a further order to set the cause, including the plea, for hearing. Joseph C. Bennet, Jr., attorney-at-law, was appointed Judge Pro-Tem to hea. and determine the issues to the cause, including the plea.

On March 30, 1961, by agreement of counsel, the Judge Pro-Tem first proceeded to hear testimony and receive evidence on the plea. The record contains transcripts, dated March 30, 1961, of all the testimony of all the witnesses, together with a transcript of a Statement of Proceedings dated April 4, 1961. The witnesses were:

Respondent, Carl Ruths and Petitioner. Received into evidence by such testimony and proceedings, are exhibits, (Def. Exh. A, B, C, D, Nos. 1-9; Pl. Exh. Nos. 1-2). The depositions of Carline Gullo, respondent's witness for the corroboration of her residence in New Mexico in her divorce suit, Brown v. Brown; John J. Brown, respondent's former husband; and Anna Ruths, respondent's room-mate in the District of Columbia after respondent left her former husband in Pennsylvania; were received into evidence without objections by stipulations. (Appendix C, infra, p. 23).

On page 7, transcript of Statement of Proceedings, April 4, 1961, counsel for respondent stated:

> "Well, I have a document here, . . . Now, this is a security investigation data for a sensitive position, and I believe it is a Standard Form 86, which lists under No. 8, dates and places of residences of the complainant from 11-36 to 12-18-54."

By agreement of counsel such document was received into evidence as defendant's Exhibit 8, which shows dates and places of respondent's residence as follows:

From	To	No. & Street	City	State
12-18-54	——	Rt. 1, Box 278B, Walton Lane	Annandale	Va.
6-1-51	12-18-54	2901 Erie St. S. E.	Wash.	D. C.
4-28-51	6-1-51	1125 Md. Ave. N. E.	Wash.	D. C.
9-1-50	4-28-51	521 - 8th St., N. E.	Wash.	D. C.
11-1-49	9-1-50	1103 Md. Ave., N. E.	Wash.	D. C.
5-1-49	11-1-49	1623 D. St., N. E.	Arlington	Va.
12-5-48	5-1-49	5th St., N.	Mt. Carmel	Pa.
10-1-48	12-5-48	348 S. Market St.	Mt. Carmel	Pa.
5-31-47	10-1-48	50 S. Market St.	Mt. Carmel	Pa.
7-1939	5-31-47	48 S. Market St.	Frackville	Pa.
1-1-36	7-1939	Spring St.		

The depositions of John J. Brown and Anna Ruths corroborates such dates and places of respondent's residences.

Respondent, as an adverse witness, testified: to such dates and places of residences; that she resided in the

District of Columbia and was there employed by the Federal government on January 8, 1951, when she mailed her attorney at Albuquerque, New Mexico, information for him to draw a bill for divorce (Appendix E, infra, pp. 25, 26, Def. Ex. 3) and an affidavit, Entry of Appearance and Waiver executed January 5, 1951, Pennsylvania, of her husband, John J. Brown (Appendix E, infra, p. 30, Def. Ex. B). In the Waiver, John J. Brown states he is defendant to the cause; that he has received a copy of the complaint; and that he denies each and every allegation contained therein but waives further notice and consents the cause to be set for hearing without further notice. By letter dated January 10, 1951, (Appendix E, infra, p. 27, Def. Ex. 4) respondent's attorney asked her to sign the complaint enclosed therein and return it to him. The Waiver and respondent's bill of complaint for divorce were filed on January 15, 1951, with the court in New Mexico. Respondent's verified bill dated January 2, 1951, (Appendix E, infra, pp. 28, 29, Def. Ex. A) shows: that she was a resident of Albuquerque, New Mexico; that her husband, John J. Brown, was a resident of Pennsylvania; that she and John J. Brown were married on May 31, 1947; that she and John J. Brown lived together as husband and wife until September 29, 1948, and she prays for a divorce on grounds of incompatibility. In February, 1951, respondent, alone by plane, went to Albuquerque to obtain her divorce; during which time, about two weeks, she was a guest at the home of Mrs. Carline Gullo, respondent's witness for corroboration of her residence in New Mexico. The court of New Mexico granted respondent a decree of absolute divorce on February 17, 1951, (Appendix E, infra, pp. 31, 32, Def. Ex. C). On March 30, 1951, respondent applied for a marriage license in the District of Columbia; wherein she represented of having no former marriages (Appendix E, infra, p. 33, Def. Ex. D). Respondent and petitioner were married April 28, 1951.

Carline Gullo testified respondent was a guest at her home at Albuquerque, New Mexico during her divorce for about two weeks, but she did not know whether respondent then, or at any time during the calendar year 1950, had a residence, or place of abode, in Albuquerque, New Mexico.

John J. Brown testified he and respondent resided at Mount Carmel, Pennsylvania before they were married; that they were married at Baltimore, Maryland, in June 1947, and continued to make their residence as husband and wife at Mount Carmel, Pennsylvania; that about one year after their marriage, respondent left their residence; that he has continued to live at the same residence; and that he refused to a divorce when first asked by respondent. He admitted executing the Waiver. A copy thereof was made an exhibit to his deposition.

Anna Ruths testified she knew respondent and John J. Brown in Pennsylvania; that she shared apartments with respondent in the District of Columbia; that respondent had dates with boy friends and one of these boy friends introduced respondent to petitioner.

Carl Ruths testified; he, his wife Anna Ruths, his sister (respondent) and petitioner were a close group; that they lived in the neighborhood area and were aware that respondent was going to New Mexico for a divorce and he would not say they had any lengthy discussion on it; that such discussions were casual.

Petitioner testified he was aware respondent was going to New Mexico for a divorce; that respondent left him during September 1950; that respondent's attorney in this cause called him to inquire what he wanted from the divorce contemplated by respondent; that petitioner asserted he wanted his marriage to continue then believing he had a valid marriage; that thereafter during the proceedings in this cause he learned his marriage to be null and void since respondent's marriage to her former

husband did not appear to be lawfully dissolved nor annulled.

Oral arguments were presented by counsel on the matters covered in the respective memoranda submitted by each of the parties. The Judge Pro-Tem denied petitioner's plea and gave recognition to respondent's divorce decree of New Mexico by granting her a divorce decree and other relief entered in the final decree, April 28, 1961. (Appendix B, infra, p. 17).

REASONS FOR GRANTING THE WRIT

1. It has been established that the court of New Mexico lacked jurisdiction and respondent obtained her divorce decree by fraud upon the court of New Mexico. Petitioner's asserts such a decree is invalid and entitled to no recognition in the State of Virginia under the Full Faith and Credit Clause of the United States Constitution. Petitioner's assertion is a federal right and its final determination rests with the Supreme Court of the United States. In Bell v. Bell, 181 U.S. 175, 21 S. Ct. 551, and Streitwolf v. Streitwolf, 181 U.S. 179, 21 S. Ct. 553 this Court held that the domicile of neither has jurisdiction to divorce and its decree is void and subject to collateral attack.

If required, this court will examine and apply the law of New Mexico where the divorce decree was rendered. The courts of New Mexico hold that the entry of respondent's divorce decree is void since she was not a bona fide resident of the State of New Mexico and the trial court was without jurisdiction to enter it. Allen v. Allen, 52 N. M. 174, 194 P. 2d 270, 274. In Golden v. Golden, 41 N. M. 356, 68 P. 2d 928, 932, 933 the court of New Mexico held that jurisdiction over the subject matter of divorce rests in domicile and a decree of divorce in one state may be impeached and denied recognition in another on the ground that neither of the parties had the required domicile, or residence, at divorce forum, notwithstanding re-

citals in decree, or record, from the other state of jurisdictional fact of domicile, or residence.

Unlike the case at bar; the cases relied upon by respondent as authorities in support of her contention involved a determination of facts relating to jurisdiction and related issues. Respondent's contention is without merit, since in Wallace v. Wallace, 63 N. M. 414, 320 P. 2d 1020, which was relied upon by respondent that petitioner cannot attack in New Mexico her New Mexico divorce decree, the court of New Mexico by virtue of the statute found it had jurisdiction where defendant had resided in New Mexico for one year and was in the military service. In Evans v. Asphalt Roads, etc. Co., 194 Va. 165, 72 S.E. 2d 321, the court of Virginia held the requirements of full faith and credit barred defendant from attacking a divorce decree on jurisdictional grounds in the court of Nevada; where there had been participation by defendant in the divorce proceedings; where the defendant had been accorded full opportunity to contest the jurisdictional issues; and where the decree was not susceptible to such collateral attack in the court of Nevada.

The American Bar Association Journal, October 1961, Volume 47, Number 10, pp. 963-967, has an article entitled; "Decisions Since Haddock v. Haddock" by Henry H. Foster, Jr., Professor of Law, wherein he reflects the interest and concern of the legal profession and the public in the subject matter of divorces by a review of cases since Haddock v. Haddock, 201 U.S. 562, 26 S. Ct. 525. In Haddock and cases following, a factual issue or issues were involved relating to jurisdiction of the court rendering the decree; kind of notice given to defendant, his appearance and opportunity to contest jurisdictional issues; and whether the decree was susceptible to attack in the courts which rendered it.

Whereas in the case at bar; it has been established that the court of New Mexico lacked jurisdiction of the subject

matter and of the parties and the divorce decree was procured by fraud of the New Mexico court by respondent; the courts of New Mexico hold such a divorce decree to be void; and further the affidavit of Entry of Appearance and Waiver appears to have been executed upon perjury of defendant, John J. Brown, and procured by the connivance and collusion of respondent. John J. Brown executed the Waiver on January 5, 1951 wherein he represents to have received a copy of the complaint (Appendix B, infra, p. 30) when in fact the information to draw such bill of complaint was mailed by respondent to her attorney on January 8, 1951, including the Waiver, (Appendix E, infra, p. 25). Respondent received a letter dated January 10, 1951 and the bill of complaint therein for her signature from her attorney, advising her to return the complaint to him without dating and acknowledging the same as he would take care of it since he is a Notary, (Appendix E, infra, p. 27). The bill of complaint as filed (Appendix E, infra, pp. 28, 29), shows it to be acknowledged on January 2, 1951 by respondent before her attorney as Notary at Albuquerque, New Mexico when in fact the information to draw such bill was mailed to her attorney on January 8, 1951 by respondent from Washington, D. C.

Clearly, the decision of the court below is believed to be erroneous in denying petitioner's plea by giving recognition to respondent's void divorce decree of New Mexico.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted.

JOSEPH SAMUEL GULLO
602 Arlington Trust Building
Arlington, Virginia

Date: November 29, 1961.

APPENDIX A

Statutes and Rules of Court

Code of Virginia 1950:

Title 8, Section 462 provides:

(2) "Any person who is a party to any case in chancery wherein there is a decree or order:

(b) Requiring money to be paid or the possession of property to be changed; or

(c) Adjudicating the principles of a cause; or

(3) Any person thinking himself aggrieved:

(c) By a final judgment, decree, or order in any civil case;

May present a petition, if the case be in chancery, for an appeal from the decree or order, and if not in chancery, for a writ of error or supersedeas to the judgment or order. . . ."

Title 8, Section 463 provides:

Time within which petition must be presented.

"No petition shall be presented for an appeal from, or writ of error or supersedeas to, any final judgment, decree, or order, whether the Commonwealth be a party or not,

(a) which shall have been rendered more than four months before the petition is presented. . . ."

Title 17, Section 94 provides:

"Jurisdiction when sitting in bank or in divisions. The judges may sit in bank, or in two divisions, consisting of not less than three judges each, as the Court may, from time to time, determine. In case the Court shall sit in divisions, each of such divisions shall have the full power and au-

thority of the Court in the determination of causes, the issuing of writs and the exercise of all powers authorized by the Constitution, or provided by law, subject to the general control of the Court sitting in bank and such rules and regulations as the Court may make.

Rules of Supreme Court of Appeals of Virginia provides:

Part Two—Equity Practice and Procedure.

Rule 2:22, Finality of Decrees, provides:

"All final decrees, irrespective of term of court, shall remain under the control of the trial court, and subject to be modified or vacated, for twenty-one (21) days after the date of entry, and no longer."

Part Five—Appellate Proceedings.

Rule 5:1, Section 4. Notice of Appeal and Assignment of Error, provides:

No appeal shall be allowed unless, prior to the expiration of sixty days after final judgment, counsel files with the clerk notice of appeal and assignment of error. Within fourteen days thereafter counsel for appellee shall file with the clerk his assignment of cross-error, if any. Only errors so assigned will be notices by this Court."

Rule 5:1, Section 12. Record Returned to Trial Court, provides:

"If the appeal is refused the clerk of this court shall return the record to the clerk of the trial court forthwith."

Rule 5:14. Mandate, provides:

". . . orders granting or refusing appeals, writs of error, or rehearings may be certified down at any time after entry."

APPENDIX B

Final Decree Entered April 28, 1961

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

In Chancery No. 15253

MIRIAM ANNE GULLO, *Complainant*

v.

JACK ANTHONY GULLO, *Defendant*

DECREE

THIS CAUSE came on to be heard on the 30th day of March, 1961, upon the Complainant's Bill of Complaint and the Defendant's Answer thereto; upon the Defendant's Plea to Annul the Marriage and the Complainant's Replication thereto; upon the Defendant's Cross-Bill and the Complainant's Answer thereto; and upon the hearing of testimony of witnesses and of the respective parties ore tenus and evidence introduced on behalf of both parties; and upon argument of counsel on the part of Complainant and Defendant.

ON CONSIDERATION of all of which, the Court is of the opinion that the Defendant is not entitled to the relief prayed for in his Plea to Annul the Marriage and that said Plea should be denied and dismissed; it is, therefore, by the Court

ADJUDGED, ORDERED, and DECREED that the said Plea to Annul the Marriage filed by the Defendant be, and the same hereby is, denied and dismissed.

FURTHER, it is the opinion of the Court that the Defendant is not entitled to the relief prayed for in his

Cross-Bill and that the same should be dismissed, and it is, by the Court, further

ADJUDGED, ORDERED, and DECREED that the said Cross-Bill of the Defendant be, and the same hereby is, denied and dismissed.

BUT IT APPEARING to the Court, independently of the admissions of either party in the pleadings or otherwise, that the parties hereto were lawfully married in the City of Washington, District of Columbia, on the 28th day of April, 1951; that both the parties hereto have resided and have been domiciled in the State of Virginia for more than one year next preceding the commencement of this suit; that the parties hereto last cohabited at Rt. 1, Box 278 B, Annandale, Fairfax County, Virginia; that both parties to this suit are members of the white caucasian race and that the Defendant is not a member of the armed forces of the United States or its Allies; and that subsequent to the said marriage of the parties hereto, on, to-wit, November 25, 1959, the said Defendant, Jack Anthony Gullo, without the procurement, connivance, or knowledge of the Complainant, Miriam Anne Gullo, committed adultery and that the said Complainant has not cohabited with the said Defendant since obtaining knowledge of the commission of said act of adultery, and that the Complainant is entitled to the relief prayed for in her said Bill; and

THE PARTIES having stipulated, by their respective counsel, and in open Court as to court costs, compensation for the court reporter for this ore tenus hearing, and counsel fees; it is, by the Court

ADJUDGED, ORDERED, and DECREED that:

1. The said Miriam Anne Gullo be, and she hereby is, granted a divorce a vinculo matrimonii from the bond of matrimony from the said Jack Anthony Gullo which was created by the aforesaid marriage, and that the said marriage be, and the same hereby is, dissolved.

2. The custody, care, and control of Charles Gullo, the minor son of the parties hereto, be, and the same hereby is, granted to the Complainant, Miriam Anne Gullo.

The Defendant, as visitation privilege, shall be allowed to have said minor child with him from 12 o'clock noon on Saturday until 7:30 o'clock in the evening of the Sunday following of every other weekend unless notified at least one week in advance by the Complainant that such weekend is inconvenient for her; in which event the Defendant shall be allowed to have said child with him at the times aforesaid on the weekend following and in place of said inconvenient time. If the Defendant shall wish, from time to time, to have the child with him for a longer period of time over a weekend for the purpose of a trip or equivalent activity and shall notify the Complainant at least one week in advance, the Complainant shall not unreasonably withhold permission from the Defendant to have the child with him from Friday evening until the aforesaid time on the Sunday following.

The Defendant shall also have the privilege of having said child with him on the holidays of Easter and Chirstmas of one year and Thanksgiving and New Year's of the following year for a period of one week during each holiday provided that said child is not kept from attending school during said week if such school be in session.

Neither of the parties hereto shall attempt in any form whatsoever to alienate the affection of said child toward the other party.

3. The Court appoints Quin S. Elson, Esquire, a competent and discreet Attorney at Law, now practicing before this Court as Special Commissioner of Sale and said Commissioner is hereby directed to forthwith offer the real property of the parties hereto known as Lot 37 of the property of R. Walton Moore and Thomas R. Keith, which is more particularly described in a certain deed dated September 30, 1952, from Frank Revel Thompson,

et ux, to the parties hereto, recorded among the land records of this County in Deed Book 1007 at page 519, for sale either by public auction or by private sale whichever in his discretion he may deem best and to submit to this Court for confirmation any offers so received by him.

At such time as an acceptable offer is received and confirmed by this Court and a decree of sale entered herein, the net proceeds thereof are to be divided equally between the parties hereto.

4. The Defendant is ordered and directed to make all the necessary payments to maintain the real property held by the parties as tenants by the entirety, including payments on any existing Deed of Trust Note secured by said property until such time as a sale of said property is consummated.

5. The Defendant is hereby ordered and directed to pay to the Complainant the nominal amount of One and No/100 Dollars ($1.00) per year as and for alimony until the Complainant remarries or becomes deceased, payable on the 1st day of May, 1961 and continuing on the 1st day of May of subsequent years.

6. The Defendant is hereby ordered and directed to pay to the Complainant, commencing on the 1st day of May, 1961, and continuing in like manner on or before the first day of each month thereafter, as and for the maintenance and support of the minor child of the parties hereto, the sum of One Hundred Eighty and No/100 Dollars ($180.00) per month; said monthly payments to continue until said child is eighteen years of age, self-supporting, or otherwise emancipated.

7. The Defendant is ordered and directed to pay to the Complainant forthwith the costs expended by her in connection with the conduct of this suit, save costs of any depositions taken at her request, and including an amount

of Three Hundred and No 100 Dollars ($300.00) for the court reporter for this ore tenus hearing.

8. The Defendant is ordered and directed to pay the firm of Lambert and Lambert, counsel for the Complainant, forthwith the sum of One Thousand Five Hundred and No 100 Dollars ($1,500.00) as counsel fees as stipulated by counsel for the parties in open Court.

9. The parties hereto be, and the same hereby are, left in the same position in which the Court found them with respect to household furnishings and United States Savings Bonds purchased by the parties during their marriage.

And to all of the foregoing the Defendant, Jack Anthony Gullo, objects and excepts.

As to paragraph eight (8) of the final part of this Decree pertaining to United States Savings Bonds, the Complainant, Miriam Anne Gullo, objects and excepts.

AND THIS DECREE IS FINAL.

Entered this 28th day of April, 1961.

/s/ Joseph C. Bennet, Jr.
Judge, *Pro Tem*

Lambert and Lambert
Attorneys for Complainant
2000 - 16th Street, North
Arlington 1, Virginia

By /s/ Jack Britton Stevens
JACK BRITTON STEVENS

/s/ Joe S. Gullo
JOE S. GULLO
Attorney for Defendant
Suite 602
Arlington Trust Building
Arlington 1, Virginia

Entered in Chancery Order Book No. 73
at page 45 and Ex.

[written] and defendant further objects that the court does not have jurisdiction to defendant to the subject matter therein in whole or in part and further defendant asserts that his marriage to complainant is void without a decree or any other legal process pursuant to Title 20-43, Va. Code, 1950

[SEAL] A COPY TESTE:

THOMAS P. CHAPMAN, JR., CLERK

BY: /s Frances D. Myers
DEPUTY CLERK

Order: October 10, 1961

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 10th day of October, 1961.

The petition of Jack Anthony Gullo for an appeal and supersedeas from a decree entered by the Circuit Court of Fairfax County on the 28th day of April, 1961, in a certain chancery cause then therein depending, wherein Miriam Anne Gullo was plaintiff and the petitioner was defendant, having been maturely considered and a transcript of the record of the decree aforesaid seen and inspected, the court being of opinion that the appeal was not perfected in the manner required by law, doth reject said petition and refuse said appeal and supersedeas.

Mr. Justice Carrico took no part in the consideration and decision in this cause.

A copy, Teste:

/s/ [signature illegible]
Clerk

APPENDIX C

Stipulations in Transcript of Proceedings, April 4, 1961, pp. 10, 11

THE COURT: "Gentlemen, I will read the stipulations and if it is what you all agreed to, then simply so state so that the reporter may get it into the record.

It is agreed that counsel for both parties stipulate, and they do hereby stipulate, that the depositions of Carline Gullo, John J. Brown and Ann Ruths, are to be admitted into evidence without objection and will form a part of the record to this cause.

"Second, that Mr. Gullo, counsel for defendant, desires to reply to a memorandum of authorities which has been submitted by Mr. Stevens, complainant's counsel, respecting the plea for annulment, and that he, Mr. Gullo, agrees to reply to this memorandum on or before the 12th day of April 1961, and further, both counsel agree that within one week following Mr. Gullo's submission of his answering memorandum of law, oral arguments will be presented by both counsel on the matters covered in both memorandum.

"Thirdly, it is stipulated that plaintiff's witness or complainant's witness for the corroboration of her residence in New Mexico in the case thereof Brown against Brown was a person known as Carline Gullo who is one and the same person by that same name whose deposition was taken in behalf of the complainant and has now become a part of the record of this cause.

"Gentlemen, that is the stipulation."

"MR. STEVENS: That is correct."

"MR. GULLO: Yes."

"THE COURT: Let the record show that both counsel replied in the affirmative."

APPENDIX D

EXHIBIT D

Respondent Concedes Not Domiciled in New Mexico at Time of Divorce

IN THE
SUPREME COURT OF APPEALS OF
VIRGINIA
AT RICHMOND

JACK ANTHONY GULLO
Appellant

vs.

MIRIAM ANNE GULLO
Appellee

BRIEF IN OPPOSITION TO PETITION FOR APPEAL

JACK BRITTON STEVENS
Suite 200
200 - 16th Street, North
Arlington 1, Virginia
Attorney for Appellee

Of Counsel:
LAMBERT and LAMBERT

ARGUMENT

I

PLEA TO ANNUL THE MARRIAGE

A. *The Full Faith and Credit Clause of the United States Constitution Prohibits the Appellant from Attacking the Appellee's Prior New Mexico Divorce Decree in This State if He Cannot Attack the Same in New Mexico.*

"The appellee concedes that she was not domiciled in the State of New Mexico at the time she obtained a divorce from her first husband, John J. Brown."

APPENDIX E

Petitioner's (Defendant—below) exhibits received into evidence without objections, in Transcript of Testimony of Miriam Anne Gullo, March 30, 1961.

Exhibit 3, Letter Dated January 8, 1951, p. 25

521 Eighth Street, N.E., Apt. 2
Washington 2, D. C.
January 8, 1951

Mr. George W. Jones
Attorney at Law
Room 6 McNabb Building
Albuquerque, New Mexico

Dear Mr. Jones:

Enclosed you will find the original copy of the "Entry of Appearance and Waiver" on which you requested the notarized signature of my husband.

You also requested the following information:

1. His name—John J. Brown
2. Date of marriage—May 31, 1947
3. Date of separation—September 29, 1948
4. There is no community property
5. I wish to obtain the divorce on the grounds of incompatibility
6. There are no children.

I should like a little further advice concerning my journey home. My position in the government is such that I can't get away too often or for too long and I would appreciate it very much if you would advise me early enough to arrange to be absent from work and to make plane reservations for the flight down. I don't know if it is possible or not, but if in any way you would represent me in this matter where my presence is not absolutely

required, I would be deeply grateful. I have heard that is some instances it may be possible to complete the divorce without the presence of the plaintiff—if this is so—it would be a boone to my financial condition. However, I am prepared to meet all situations that may arise. If you wish me to sent you a retaining fee, let me know.

Your promptness in this matter is commendable and your letter of January second was very informative. May I hear from you at your earliest convenience concerning the above queries.

Sincerely yours,

Exhibit 4. Letter Dated January 10, 1951, pp. 25, 26

GEORGE W. JONES
Attorney at Law
Room 6 McNabb Building
Albuquerque, New Mexico

Phone 2-3185

January 10, 1951

Mrs. Miriam A. R. Brown,
Apt. 2, 521 Eighth St., N. E.
Washington 2, D. C.

Dear Mrs. Brown:

Please sign the enclosed affidavit as to military service, and sign the complaint at the two places indicated and return to me. Do not date these papers and do not have them acknowledged. I will take care of that here as I am a notary public.

I have written you under separate cover and as soon as I receive the signed complaint and affidavit and the retainer the complaint will be filed and thirty days from that time we will be ready for trial. You will have to be present for the trial—there is no other way. I will advise you of the date of the hearing when papers are filed. You only have to come back once.

Very sincerely yours,

/s/ George W. Jones
Attorney-at-Law

Enclosures
GWJ:IM

Exhibit A, Complaint of Divorce Filed in New Mexico, pp. 27, 28

Filed In My Office This January 15, 1951,
Rubie M. Krahn, Clerk District Court

IN THE DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF BERNALILLO

No. 46511

MIRIAM A. R. BROWN,
Plaintiff

vs.

JOHN J. BROWN,
Defendant

COMPLAINT

Plaintiff complains of the defendant and for her cause of action respectfully shows to the court:

1. That the plaintiff is a resident of Albuquerque, Bernalillo County, State of New Mexico, and the defendant is a resident of the state of Pennsylvania.

2. That plaintiff and defendant were married on 31st day of May, 1947 and since that time have been and now are husband and wife.

3. That there are no children born of this union and no community property rights to be adjudicated.

4. That plaintiff and defendant lived together as husband and wife until September 29, 1948 at which time they separated because of the continued state of incompatibility which had existed between them throughout their entire married life and because of this state of incompatibility plaintiff and defendant are now permanently separated and can no longer live together or ever resume their marital relations with each other.

WHEREFORE:

Plaintiff prays that the bonds of matrimony heretofore existing between the plaintiff and defendant be dissolved and held for naught and plaintiff be granted a decree of absolute divorce from the defendant on the grounds of incompatibility.

Plaintiff further prays for such other and further relief that to the court may seem right and just.

/s/ Miriam A. R. Brown
Plaintiff

/s/ George W. Jones
Attorney for the plaintiff

STATE OF NEW MEXICO)
COUNTY OF BERNALILLO) ss

Miriam A. R. Brown, being first duly sworn upon her oath, deposes and says that she is the plaintiff in this cause, that she has read the foregoing complaint, knows its contents and that the matters therein alleged are true of her own knowledge.

/s/ Miriam A. R. Brown

Subscribed and sworn to before me this 2nd day of January, 1951.

/s/ George W. Jones
Notary Public

My commission expires
July 12, 1953.

Exhibit B. Entry of Appearance and Waiver Filed in New Mexico, pp. 28, 29

Filed In My Office This January 15, 1951,
Rubie M. Krahn, Clerk District Court

IN THE DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF BERNALILLO

No. 46511

MIRIAM A. R. BROWN,
Plaintiff

vs.

JOHN J. BROWN,
Defendant

ENTRY OF APPEARANCE AND WAIVER

STATE OF PENNSYLVANIA)
COUNTY OF NORTHUMBERLAND) ss

John J. Brown, being first duly sworn upon his oath deposes and says that he is the defendant in this cause, that he has received a copy of the complaint in this case, and that he denies each and every allegation contained therein but waives any further notice of a hearing or summons to appear and consents that this cause be set down for a hearing at any time without further notice.

/s/ John J. Brown
Defendant

Subscribed and sworn to before me this 5th day of January, 1951

/s/ Elmer Schultz
Notary Public

My commission expires:
January 29, 1961

Exhibit C, New Mexico Divorce Decree, pp. 29, 30

Filed In My Office This February 17, 1951.
Rubie M. Krahn, Clerk District Court

IN THE DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF BERNALILLO

No. 46511

MIRIAM A. R. BROWN,
Plaintiff

vs.

JOHN J. BROWN,
Defendant

DECREE

This day this cause came on to be heard before the court upon the complaint filed herein by Miriam A. R. Brown, plaintiff vs. John J. Brown, defendant in which the plaintiff prays for an absolute divorce from the defendant on the grounds of incompatibility, Cause #46511, Bernalillo County, State of New Mexico.

Plaintiff appeared in person and by her attorney, George W. Jones, and the defendant came not although he has filed herein his Entry of Appearance and Waiver denying the allegations of the plaintiff but consenting that this cause be set down for a hearing at any time without further notice.

The court having read the complaint, the affidavit of non-military service, and entry of appearance and waiver and after hearing the testimony of the plaintiff and her witness, and being fully advised in the premises, the court finds:

That the plaintiff and defendant were married May 31, 1947 and separated September 29, 1948.

The court further finds that there are no children born of this union and no community property rights to be adjudicated.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED: BY THE COURT:

That the plaintiff be and she hereby is granted a decree of absolute divorce from the defendant on the grounds of incompatibility.

/s/ Waldo H. Rogers
District Judge

Exhibit D. Application for Marriage, pp. 32, 33

No. 354720

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

APPLICATION FOR MARRIAGE LICENSE

District of Columbia, ss:

I, Miriam A. Ruths, applicant for the issuance of a Marriage License to the persons named herein, do solemnly swear (affirm) that the answers to the following interrogatories are true, to the best of my knowledge and belief: So help me God.

	Male	Female
Names	Jack Anthony Gullo	Miriam Anne Ruths
Ages	26	23
Color	White	White
Relationship	None	
Former marriages	None	None
Residence	Mount Morris, N. Y.	Mt. Carmel, Pa.

Witness:

Miriam Anne Ruths

Subscribed and sworn to before me, this 30th day of March, 1951

[SEAL]

Harry M. Hull
Clerk
By Irene P. McFeely
Deputy Clerk

A TRUE COPY
TEST

HARRY M. HULL, Clerk
By Maud R. Rynex
Deputy Clerk

Sept. 13, 1961